THE HON'BLE SRI JUSTICE C.V. RAMULU

Friday, 11th August, 2006

W.P.No.9871 of 2005

Between:

M. Santosh … Petitioner

and

The District Collector,
Mahaboobnagar District,
Mahaboobnagar and others … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.9871 of 2005

ORAL ORDER:

This Writ Petition is filed is seeking a Certiorari to call for the records pertaining to the Order dated 16-4-2005 in Case No.CS7/747/2004 passed by the 1st respondent and to declare the same as arbitrary and illegal and consequently to declare the appointment of the 4th respondent as fair price shop dealer of Shop No.2 of Madhurapur village, Farooqnagar Mandal, Mahaboobnagar district as illegal.

In spite of service of notice through Court in W.P.M.P.No.12845 of 2005 as well as in the main Writ Petition, none appears for the 4th respondent nor is there any representation on his behalf. Notice in the WPMP was served on 9-5-2005 and the notice in the Writ Petition was served on 24-6-2005.

It appears that two fair price shops are available in Madhurapur village, Farooqnagar Mandal of Mahaboobnagar district. One vacancy arose since the dealer against shop No.2 was removed. Therefore, a notification was issued on 15-5-2002 by the 3rd respondent-Revenue Divisional Officer calling for applications from the eligible physically handicapped persons for filling up the said vacancy. It seems, the petitioner and the 4th respondent applied for the same. The petitioner was selected and was appointed by Proceedings dated 1-7-2002 of the 3rd respondent. Immediately, the 4th respondent, being aggrieved

by the appointment of the petitioner, filed an appeal before the 2nd respondent-Joint Collector. Respondent No.2 allowed the appeal by an Order dated 14-7-2004. Challenging the same, the petitioner filed a revision before the 1st respondent-District Collector. Respondent No.1, by his Order, dated 16-4-2005 dismissed the revision upholding the Order passed by the 2nd respondent. Assailing the said Order, the present Writ Petition is filed.

It is the case of the petitioner that he had produced a valid physically handicapped certificate and the same was considered by the 3rd respondent properly and appointed him as per merits. Further, he is aged about 26 years i.e. within the age limit of 40 years. Respondent No.2 without properly considering the certificate issued by the Superintendent/Chairman of Osmania General Hospital, Hyderabad had passed a cryptic order stating that the certificate issued in favour of the 4th respondent is valid, whereas the certificate issued in his favour is not valid. In fact, the 4th respondent was more than 45 years of age as on the date of appointment. So far as this aspect is concerned, the authorities below have stated that physically handicapped persons are entitled for age relaxation for 10 years; therefore, even if the 4th respondent is 45 years of age, he can be appointed as fair price shop dealer, since he satisfies the test of 40% disability.

Learned counsel for the petitioner strenuously contended that the very notification prescribes the age qualification as between 18 and 40 years; therefore, practically there was no other valid application available with the 3rd respondent, except the application of the petitioner. If really it was notified that the physically handicapped persons are entitled for age relaxation upto 50 years many people

would have applied for the same. This is not one such case. On their own, the appellate authority as well as the revisional authority have come to the conclusion that the physically handicapped persons are entitled for relaxation of 10 years of age. Therefore, even if the 4th respondent is over aged, his application can be considered since he satisfies the criterion of 40% disability.

Heard the learned Government Pleader, who supported the impugned Orders.

In the facts and circumstances of the case, I am of the opinion that respondents 1 and 2 have misdirected themselves in passing the impugned Orders. Unless and until it is notified that the age relaxation is available for physically handicapped persons and even those who are above 40 years of age are entitled for submitting the applications, such a conclusion could not have been arrived at by the authorities. Further, learned counsel for the petitioner drawn attention of the Court to the certificate produced by the petitioner showing that he is a physically handicapped person and the same is also signed by the Superintendent/Chairman, Osmania General Hospital. Once this is so, it cannot be said that it is not signed by the Chairman. Further, he submits that in a case of this nature, i.e., the nature of physically handicappedness of the petitioner is crippled (deformed in any part of the body other than legs and is disabled). It was certified against this Column V that 'post operative left lip and palate with huge fistula; this is resulting in improper speech'. The said certificate was issued by the Medical Board, Osmania General Hospital, Hyderabad on 18-3-2004.

Be that as it may, the authorities below have grossly erred in holding that the 4th respondent, though is more than 45 years of age, his application can be considered. On this ground alone, the Orders passed by the 2nd respondent as confirmed by the 1st respondent are

liable to be set aside and are accordingly set aside.

The Writ Petition is, therefore, allowed. The petitioner shall be appointed as fair price shop dealer of Shop No.2 of Madhurapur village, Farooqnagar Mandal, Mahaboobnagar district, forthwith. No order as to costs.

11-8-2006

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